

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

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MELISSA SOLANO and CEIL STEARMAN)

Plaintiffs,)

- against -)

ROLLING STONE L.L.C.,)

Defendant.)
-----X

Case No. 08 CV 3909

**DECLARATION OF DEBORAH DRAGON IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE
FOR SUMMARY JUDGMENT**

I, DEBORAH DRAGON, declare as follows::

1. I am the Deputy Photo Editor at *Rolling Stone* magazine (the "Magazine"), which is owned and published by defendant Rolling Stone L.L.C ("Defendant"). I submit this affidavit in support of Defendant's motion to dismiss the complaint or in the alternative for summary judgment in the above-captioned action. I have personal knowledge of the facts in the declaration and if called as a witness would be competent to testify on such matters.

2. Among other duties, I select photographs that are used to illustrate articles and features that appear in the Magazine. *Rolling Stone* regularly published a column called "On The Web" from March 2006 to June 2007 which highlighted interesting and unique websites (the "Column"). The Column was a regularly recurring editorial feature appearing in the "Internet" section of the magazine. It was designed for the newsworthy purpose of providing readers with descriptions of and information relating to various noteworthy websites.

3. The content of the Column (*i.e.*, the websites and images featured) was selected

solely based on the editors' belief of what will be of interest to the magazine's readers.

Advertising concerns play no part in deciding what to include or feature in the Column. *Rolling Stone* received no payment or other consideration for any website mentioned in the Column. The Internet section of the Magazine was included in the Magazine's Table of Contents.

4. The edition of the Column appearing in the May 31, 2007 issue of *Rolling Stone* magazine, published in the "Internet" section of that issue, occupied approximately one-quarter (1/4) of a page and featured five different websites. The cover, table of contents and the Internet section from the May 31, 2007 issue of *Rolling Stone* magazine is annexed hereto as Exhibit A.

5. The Column featured the following websites: (1) funnyordie.com (comedian Will Ferrell's new site); (2) liveearth.msn.com (a site devoted to the failed heavy metal band "Spinal Tap"); (3) thewvsr.com/advsreality.htm (an online gallery comparing advertising pictures of fast food with their real life depictions); and hotchickswithdouchebags.com (a site providing photos and commentary of "gelled-and-tanned dudes and hot babes mugging it up for the camera"). A true and correct copy of the Column is annexed hereto as Exhibit B.

6. To illustrate the type of material that can be found on the websites featured in the Column, the editors reproduced photographs appearing on or relating to three of the five sites. For example, a photo of Will Ferrell was published next to the description of the funnyordie.com site, along with images of Alec Baldwin and Dora the Explorer (who were the subjects of one of the video clips on that site). A photograph of a fast-food hamburger was reproduced from thewvsr.com/advsreality/htm, to provide an example of the photos that appear on that site. Likewise, a representative photograph from hotchickswithdouchebags.com was republished next to the Column's description of that site.

7. The website hotchickswithdouchebags.com (the "Website") was included in the

Column because the editors believed that it was a noteworthy site that would be of interest to the magazine's readers. (I enclose as Exhibit C the homepage for the www.hotchickswithdouchebags.com website which includes a description of the site.) The photograph of plaintiffs that appears along side the Column's description of the Website (the "Photograph") was obtained directly from hotchickswithdouchebags.com, where it was originally posted on or around November 2006. At the time the May 31, 2007 issue of *Rolling Stone* was made publicly available, the Photograph was prominently displayed on the Website as the "HCwD of the Week", in a larger and clearer format than eventually appeared in *Rolling Stone*. Annexed hereto as Exhibit D are true and correct copies of relevant pages from the Website displaying the Photograph with accompanying commentary. I understand that at some point after the publication of the May 31, 2007 issue the Photograph was deleted from the Website.

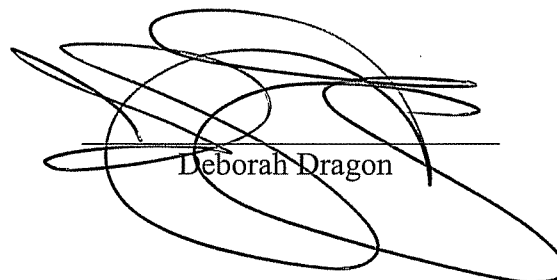
8. The editors republished the Photograph in the Column for the purpose of illustrating, for the magazine's readers, the subject of the Column and the type of material that could be found on the Website. The Photograph was selected because it appeared prominently on the Website and was representative of the type of photographs that appeared on it; namely, "dudes and hot babes mugging it up for the camera."

9. The Photograph shows only the women's profiles and does not display any other recognizable traits, characteristics, or personal effects. I did not believe that the two women were identifiable. Along with other photos included on the Internet page that were obtained from various websites, I asked production to somewhat blur the faces. Since the Photograph was being used editorially as an illustration for an article about the Website (and the Photograph was

obtained from the Website), we did not (nor would we ever) obtain consent of the persons depicted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2008.



Deborah Dragon

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a true and correct copy of the foregoing ***Declaration of Deborah Dragon in Support of Defendant's Motion to Dismiss or, In the Alternative, for Summary Judgment*** on:

Steven A. Sigmond
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via messenger delivery and via electronic mail on August 8, 2008.

/Steven L. Baron/
Steven L. Baron

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DELETED